

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60533

FILE: B-184887

DATE: February 18, 1976

MATTER OF: Quality Services, Inc.

98592

DIGEST:

1. Failure to timely acknowledge amendment which revises wage determination upward is not minor informality or irregularity which can be waived under ASPR § 2-405(iv), since acceptance of bid in form that it exists at time of opening would not result in contract requiring contractor to pay established Service Contract Act rates, which clearly affects price.
2. Where protester acknowledges amendment in name of affiliate firm and amendment is signed by president of affiliate, whereas protester's bid was in name of protester and signed by president of protester, amendment cannot be considered as amendment submitted by protester since there is no evidence that affiliate and protester had same corporate identity, even though protester and affiliate had same address and telephone number. Moreover, no evidence presented that president of affiliate was authorized to sign amendment for protester so as to bind him to terms of amendment.
3. Where protester erroneously submits amendment in name of affiliate and president of affiliate signs amendment, contracting officer was not on notice that bidder had made mistake by submitting amendment in name of affiliate and was under no obligation to insure proper acknowledgment by protester, neither did contracting officer's request for verification of protester's bid because of a suspected mistake in bid price cause him to suspect a mistake in manner amendment was submitted.
4. Mistake made in manner amendment was acknowledged may not be corrected after bid opening since nonresponsive bid cannot be made responsive by correction of mistake made by bidder.

By letter of September 3, 1975, the attorney for Quality Services, Inc. (Quality), protested the award of a contract to any other concern under invitation for bids (IFB) No. N00204-76-B-0004, issued by the Naval Air Station, Pensacola, Florida, on the basis that it (Quality) was the low responsive bidder.

IFB -0004, issued on July 11, 1975, solicited bids for furnishing labor and materials to perform complete food service operations at Lakeside Manor, Pascagoula, Mississippi, for the period October 1, 1975, through September 30, 1976. The invitation was amended on August 4, 1975, by amendment No. 0001 which revised upward the Department of Labor's minimum wage determination under the Service Contract Act, 41 U.S.C. § 351 et seq. (1970), and extended the bid opening date to August 19, 1975.

Eight bids were received in response to the solicitation. Quality submitted the low bid while A. R. & S. Enterprises, Inc. (A.R.&S.), submitted the second low bid. However, Quality's bid was declared nonresponsive for failure to acknowledge amendment No. 0001. Award was subsequently made to A.R.&S. However, prior to declaring Quality's bid nonresponsive, the contracting officer requested a verification of Quality's price and Quality verified its price.

According to Quality, Mr. Guy Moody, president of Quality, and Mr. Milton Eidson visited the contracting officer's office on August 5, 1975, the original bid opening date, and were advised that bid opening had been postponed until August 19, 1975. Mr. Moody requested a copy of the amendment postponing the bid opening. Apparently, the reason the amendment had not been sent to Quality was that the firm was not on the contracting officer's bidders list. However, an amendment had been sent to Lester Phillips, Inc., a Quality affiliate who had not submitted a bid, but was on the bidders list. Mr. Moody was given an amendment for Quality. According to Quality, it acknowledged receipt of the amendment by registered mail, but the acknowledgment was erroneously sent in the name of Lester Phillips, Inc. The postal receipt indicated that this acknowledgment was received by the contracting officer on August 14, 1975.

Quality contends that (1) it did acknowledge receipt of amendment No. 0001; (2) should it be determined that it did not acknowledge amendment No. 0001, the amendment did not materially affect the solicitation and, therefore, failure to acknowledge the amendment was not sufficient reason for the contracting officer to reject its bid; and (3) the situation was such that the contracting officer was on notice of the mistake and his failure to give Quality an opportunity to correct the manner in which the amendment was acknowledged resulted in Quality being unjustifiably denied the contract.

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Regarding Quality's first contention that it did acknowledge receipt of the amendment, Quality admits that the acknowledgment was sent in the name of Lester Phillips, Inc. Since Quality's bid was submitted in the name of Quality Services, Inc., and signed by Guy Moody, president, we are of the view that Quality would not be bound by an acknowledgment of the amendment in the name of Lester Phillips, Inc., and signed by Lester Phillips, since there is no evidence that Lester Phillips, Inc., has the same corporate identity as Quality. While admittedly both corporations had the same address and telephone number, Quality states that Lester Phillips, Inc., was an affiliate and presumably had a separate corporate identity. But in any event, there is no evidence that Lester Phillips was authorized to sign the amendment on behalf of Quality. Cf. 49 Comp. Gen. 459, 462 (1970).

Concerning Quality's second contention that since the amendment did not materially affect the solicitation, the contracting officer did not have sufficient reason to reject Quality's bid, we recognize that under Armed Services Procurement Regulation § 2-405(iv) (1975 ed.) failure to acknowledge receipt of an amendment may be waived where the bid received clearly indicates that the bidder received the amendment, or the amendment clearly would have no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or the relative standing of bidders. However, none of these exceptions apply in the present case since the amendment did, as previously mentioned, revise the statement of Labor's minimum wage determination under the Service Contract Act which would clearly have an effect on price.

Furthermore, it is the established position of our Office that the failure of a bidder to acknowledge receipt of a wage determination amendment may not be waived as a minor informality in bid under accepted procurement practices and such failure properly renders the bid nonresponsive. See Hinck Electrical Contractors, Inc., B-184625, October 20, 1975, 75-2 CPD 244, and cases cited therein.

Next, we consider Quality's third contention that the situation was such that the contracting officer was on notice of Quality's mistake, i.e., submitting the amendment in the name of Lester Phillips and, thus, Quality should have been given an opportunity to correct the manner in which the amendment was submitted. We are unable

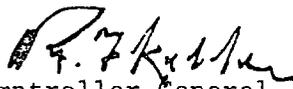
to conclude that when the contracting officer received the amendment from Lester Phillips, Inc., he was on notice that the amendment was intended to be Quality's acknowledgment of the amendment. We do not believe that the contracting officer was, in the present case, under any obligation to insure the proper acknowledgment of Quality's amendment before bid opening. Quality contends that the contracting officer apparently suspected a mistake since he requested and received a verification of Quality's price. However, the record reflects that the mistake suspected by the contracting officer was a possible mistake in Quality's bid price since Quality's price was almost \$23,000 lower than the next low bid, rather than a suspected mistake in Quality's acknowledgment of the amendment. Specifically, the contracting officer states:

"During the initial evaluation of bids, the Government erroneously failed to declare the low bidder, Quality Services, Incorporated, nonresponsive to the invitation for its failure to acknowledge Amendment 0001 which had an effect on price. The error was extended to include a request for verification of the nonresponsive bidder's bid price."

Finally, even if we recognize that Quality made a mistake in the acknowledgment of the amendment in question, this mistake cannot be corrected after bid opening since this Office has consistently followed the rule that an otherwise nonresponsive bid cannot be made responsive by the correction of a mistake made by the bidder. B-170351, August 25, 1970, and cases cited therein.

Since Quality's bid was nonresponsive, the contracting officer properly rejected it and the award to A.R.&S., as the low responsive bidder, is not questioned.

Accordingly, Quality's protest is denied.


Deputy Comptroller General
of the United States